United Nations A/58/566

General Assembly

Distr.: General
10 November 2003

Original: English

Fifty-eighth session
Agenda item 26
The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala*

Note by the Secretary-General

Summary

The present document contains the fourteenth report on human rights of the United Nations Verification Mission in Guatemala (MINUGUA), which has been monitoring implementation of the country's peace agreements. During the reporting period, from July 2002 to June 2003, human rights compliance has deteriorated. Violations by the police have increased and impunity is the norm. The Mission found that this deterioration is closely linked to the failure to advance on other aspects of the peace agreements.

* The present report is an overall assessment of the human rights situation in Guatemala since 1996 and is timed to coincide with the end of the Mission's monitoring of the full set of peace agreements on 31 December 2003. Should the Assembly decide to extend the mandate into 2004, the size of the Mission and the scope of its mandate will be reduced.

03-60649 (E) 031203

1. The attached document contains the human rights report for 2003 of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I). The report, transmitted by the Chief of Mission, is the fourteenth on the subject. In accordance with the practice established since the Mission's inception, I shall transmit a copy of the report to the United Nations High Commissioner for Human Rights, with the request that it be brought to the attention of the members of the Commission on Human Rights.

2. In my report to the General Assembly, dated 1 November 2002, on the renewal of the mandate of MINUGUA (A/57/584), I conveyed the request of the Government of Guatemala that the Mission's mandate be extended. It was renewed until 31 December 2003 by the General Assembly in resolution 57/161 of 16 December 2002. The results of the Mission's verification of compliance with the full range of the peace agreements for the period from May 2002 to July 2003 are set forth in my eighth verification report (A/58/267), dated 11 August 2003.

3. I wish to express my gratitude to the Government of Guatemala for its continued cooperation with the Mission. I should also like to thank the Member States and the United Nations system in Guatemala for the consistent cooperation and support provided to the Mission and the Guatemalan peace process.

Annex

Fourteenth report on human rights of the United Nations Verification Mission in Guatemala

I. Introduction

1. In 1994, the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) requested the United Nations to establish a mission to monitor the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I) that had been signed by the parties, and subsequently to verify compliance with the full range of peace agreements signed in 1996. The United Nations Verification Mission in Guatemala (MINUGUA) has since issued 13 reports on the Government's protection of a set of priority rights contained in the Comprehensive Human Rights Agreement, the Agreement on Identity and Rights of Indigenous Peoples (A/49/882-S/1995/256, annex), and the Agreement on the Strengthening of the Civilian Power and the Role of the Armed Forces in a Democratic Society (A/51/410-S/1996/853, annex). The Mission has also issued thematic reports in Guatemala on the functioning of the judiciary (2000), the prison system (2000), the national police (1999, 2001), lynchings (2000, 2002), discrimination against indigenous peoples (2001) and public security (2003).

2. The human rights work of MINUGUA has focused on the Government's commitments to protect (a) the right to life (ending extrajudicial killings by the army, police, security services and other state actors); (b) the right to personal integrity (ending illegal searches, detentions, torture and ill-treatment by Government security forces); (c) the right to freedom of expression without Government interference; and (d) the free exercise of all political rights (guaranteeing full participation in politics and free and fair elections). In addition, the Government made a commitment to (a) end discrimination against indigenous peoples; (b) adopt legislation and mechanisms for the protection of human rights; (c) combat impunity; (d) strengthen the key State institutions responsible for protecting human rights (the National Civil Police, the Public Ministry, the courts and the Human Rights Ombudsman); (e) protect human rights activists and defenders; and (f) ensure that illegal security organizations, clandestine groups and parallel structures, many of which were created as anti-insurgency mechanisms during the war, would no longer operate.

3. The present report assesses the overall progress on human rights from the signing of the Agreement on a Firm and Lasting Peace (A/51/796-S/1997/114, annex II) in December 1996 until mid-2003. An overall assessment now is timely for three reasons. First, the seven years since 1996 provide sufficient distance to evaluate positive and negative trends affecting the human rights situation. Second, the Mission is winding down in preparation for the end of its mandate at end of 2004 and preparing overall assessments in each of its substantive areas of work, beginning with the present report. Third, new national and local governments will be elected at the end of 2003 and a sober evaluation of progress and setbacks should assist the administration taking office in 2004 in the development and implementation of national human rights priorities for the 2004-2008 period.

II. Evolution of the human rights situation since the signing of the peace agreements

A. Guatemala at the signing of the peace agreements

4. Throughout most of Guatemala's history, the country's business and land-owning elites, supported by the military, dominated the country, particularly the rural, predominantly indigenous population, which provided the bulk of the labour supporting the agriculture-based economy. The indigenous populations faced intense racial and economic discrimination and lacked access to basic housing, health and educational services. State institutions, including the judiciary, were weak, captured and controlled by the economic elite and the army, largely serving private interests, and barely reached beyond the capital and a few urban centres. The army was the only significant State presence in large areas of the interior.

5. The 1960-1996 armed conflict, particularly the decade of the 1980s, devastated rural indigenous regions under the control of military commissioners and army patrols supplemented by local civilian self-defence patrols (*patrullas de auto-defensa civiles* (PACs)) created by the army. According to the Commission for Historical Clarification (see A/53/928, annex), approximately 200,000 individuals were killed or disappeared during the conflict, mostly civilians, approximately 85 per cent of them Mayan. The Commission concluded that the army and PACs were responsible for 93 per cent of the massacres, executions, disappearances and other human rights violations committed during the war, including acts of genocide against indigenous groups. In the indigenous highlands, villages were destroyed and populations displaced, particularly during the army's 1981-1983 "scorched earth" campaign, and the violence used by the army and the PACs ripped apart the social fabric of these communities. The military also used its intelligence apparatus to create clandestine organizations responsible for monitoring, harassing and executing suspected supporters of the guerrillas in urban as well as rural areas.

6. The peace agreements committed the Government and the guerrillas to a comprehensive set of measures to address the underlying causes of the war: decades of authoritarian government, repression of potential political opposition, and the political and economic exclusion, discrimination and extreme poverty suffered by the indigenous populations. The first step involved disarming and reintegrating the guerrillas; restructuring and redeploying the armed forces for peacetime; disbanding the military commissioners and the PACs dominating rural indigenous areas; dissolving the clandestine groups set up by military intelligence during the war; and ending the State's decades-long policy and practice of repression as a means of social and political control. The second step required a fundamental restructuring of the State's security and justice sector institutions: the creation of a new national civilian police force; modernization and reform of the judiciary and the Public Prosecutor's Office; establishment of a public defender's programme; an overhaul of the prison system; economic development and victim compensation directed to the indigenous communities hardest hit by the conflict; and the promotion of national reconciliation. In addition, the Government committed itself to protect human rights defenders and adopt the security, legal and constitutional measures necessary for full enjoyment and protection of human rights.

7. The challenges were enormous. The Government needed to construct a legal framework for independent democratic institutions. A new police force had to be built from the ground up. The judicial sector organizations were staffed by many poorly qualified, inefficient and corrupt professional and administrative staff and hampered by antiquated procedures, equipment and infrastructure. Most of the country, in particular the indigenous communities, had no access to the formal justice sector. Each of these institutions would have to overcome a legacy of subservience to the military and powerful economic and political actors, while combating the efforts of many of these same actors to undermine reform programmes that would threaten their historic ability to control State institutions and policy with impunity.

B. Overall assessment of human rights in Guatemala seven years after the signing of the peace agreements

8. In assessing the progress made in human rights since the signing of the peace agreements, it should be noted that Guatemala is a different country today than it was at the termination of the armed conflict. The ending of the violence and authoritarian, repressive State practices associated with the war brought enormous benefits to the areas of the country that suffered the terrible impact of the fighting. The guerrillas were demobilized and reorganized as a political party that freely contested the 1999 and subsequent national and local elections. The civil defence patrols were officially disbanded and their weapons turned in to the armed forces. Resettlement of refugees and internally displaced populations advanced, although many of those communities lack important assistance even today. Commitments to reduce the size of the armed forces and the military percentage of the budget (as compared with 1995) by 33 per cent were met in 1998 and 1999, respectively.

9. Most of the framework for a fully participatory democratic State has been created. Legal reforms from 1994 to 1998 established the bases for independent police, prosecution and justice systems, and the Supreme Court and the Public Prosecutor's Office began implementing multi-year modernization programmes with the assistance of the international community. An independent civilian police force was created and fully deployed by 2001.

10. The opening and democratization of the political process has also been an important accomplishment. Guatemala's political system is competitive, although political parties and the Congress are still weak. In Guatemala's first post-peace agreements national elections, held in 1999, power was peacefully transferred from the governing party, the Partido de Avanzada Nacional, to an opposition party, the Frente Republicano Guatemalteco. National elections were again under way as this report was produced. Although marked by controversy over the candidacy of Efrain Rios Montt and some violence, the campaign remained competitive and international observers were deployed to help ensure an open and fair contest and a legitimate outcome.

11. The press is free and vigorous, highly vocal on political matters, with newspapers, in particular, extremely critical of the Government. Nonetheless, problems persist, as members of the press have been threatened and harassed for reporting on human rights cases and Government corruption. The Public Prosecutor's Special Prosecutor for Crimes against Journalists and Labour has

received 89 complaints from the press since June 2001. Domination of the media by a few actors serves to discourage a wider spectrum of national views and access to radio stations by the indigenous populations (a commitment of the peace agreements). The critical approach of the press towards the Government has, at times, lacked sufficient objectivity and balance.

12. Since 1997, the Government has strengthened the national human rights protection framework by ratifying important international human rights treaties, adopting a long-awaited anti-discrimination law and demonstrating a welcome willingness to resolve human rights cases brought against the State of Guatemala in the Inter-American Court of Human Rights. In addition, after years of frustrating delays in discussions with civil society organizations and victims groups, the Government took a major step forward in 2003 on long-pending commitments by creating the National Reparations Commission, a body responsible for developing programmes for compensating the victims of the armed conflict and their communities.

13. The Human Rights Ombudsman appointed in 2002 has been a highly visible defender of the human rights of Guatemala's citizens, intervening on a wide range of problems on behalf of victims, firmly establishing the office in the public eye as the key national institution for the defence and promotion of human rights. The Ombudsman is making important strides to fulfil his constitutional role in spite of serious budget limitations and threats and attacks against his staff and offices.

14. The emergence of civil society organizations with a growing capacity to monitor human rights, pursue legal remedies, critique Government programmes and develop policy proposals has been a promising development. Civil society organizations played important roles in the selection of Supreme Court justices in 1999 and the Public Prosecutor and Human Rights Ombudsman in 2002. Organizations representing indigenous populations are playing a greater role in developing agendas and proposals concerning indigenous political, economic and cultural rights even in the face of continued discrimination and isolation.

15. However, these steps forward have been progressively undermined by several negative trends that have persisted since the signing of the peace agreements. First, and perhaps most serious, the Government, Congress, political parties and the business community appear to have forsaken the institutional development measures at the heart of the peace agreements and the consolidation of a democratic State. This problem has been noted at least since 1999, when a national referendum to incorporate the peace agreements into the Guatemalan Constitution was defeated and many of the commitments due to be completed in 1999 had to be rescheduled for 2001. The business community has repeatedly opposed Government and Congressional efforts to raise the tax rate towards the threshold set out in the peace agreements of 12 per cent and issue bonds to finance social spending priorities. The Government and the Congress have not adequately financed the strengthening of the police, the judiciary, the Public Prosecutor's Office or that of the Human Rights Ombudsman. Many bills mandated under the peace agreements remain pending in the legislative pipeline. The post-peace agreements Governments have been reluctant to reduce the role of the military in civilian affairs, particularly in public security and disband the Presidential General Staff, an organization notorious for its human rights record.

16. The second trend is the disregard of key human rights and rule of law institutions occurring during a period marked by a rise in criminal violence and the increasing presence and activity of organized crime and drug trafficking cartels throughout the country. The number of violent deaths since the end of the conflict increased from 3,200 in 1995 to 3,999 in 1997, declined to 2,655 in 1999, and then shot up again to 3,600 in 2002, leaving Guatemala with one of the highest violent crime rates in Latin America. Mob lynchings continued in the interior of the country where State presence remains weak, resulting in 240 confirmed deaths and 723 injuries between 1996 and 2002.

17. Third, full compliance with the commitments of the peace agreements to reorganize or dismantle the State organs of repression has been questioned as a result of the continued involvement of the army in public security activities; former PAC members reorganizing to demand payment for services during the armed conflict; evidence of the involvement of military intelligence, including members of the Presidential General Staff, in efforts to block investigations and trials for human rights violations committed during the conflict; and the mutation of clandestine structures from the era of the conflict into multifaceted networks engaged in corruption and organized crime. Members of the Presidential General Staff were implicated in the killings of anthropologist Myrna Mack (1990), then-President of the Constitutional Court, Epaminondas González Dubón (1994), Pedro Sas Rompich (1996) and Monsignor Juan José Gerardi (1998); participated in anti-kidnapping operations with the police in 1997; carried out parallel investigations in the Edgar Ordóñez Porta, Mack and Gerardi cases, which distorted the investigations carried out by the Public Prosecutor and the judiciary; and were implicated in the surveillance of forensic anthropologists in 2003. This organization was finally disbanded in late 2003.

18. Fourth, the harassment and intimidation of human rights defenders has continued since 1997. The Mission investigated 43 cases of threats against human rights defenders in 1998 (26 death threats), 57 in 1999 (35 death threats) and 77 in 2000 (34 death threats). In the 2001-2002 period, the number of cases jumped significantly, rising to 140 (63 death threats) in 2001 and 82 in 2002 (38 death threats). International concern over this climate of intimidation led to visits from the Special Rapporteur of the Commission on Human Rights on the independence of judges in 1998 and 2001, the Special Representative of the Secretary-General on human rights defenders in 2002 and the Inter-American Commission on Human Rights in 2003.

19. Fifth, the response from the State institutions responsible for public order and criminal justice — seriously underfinanced and plagued by slow reforms, inadequately trained personnel, and corruption — has been poor. The National Civil Police has been undermined by widespread corruption and an inability to stem the rise in criminal violence. The Public Prosecutor and courts have made little significant headway in combating corruption and organized crime or in investigating the ongoing harassment of human rights defenders and judicial sector officials. Important human rights investigations and judicial proceedings have languished unless accompanied by extraordinary efforts from individual judiciary officials and civil society organizations.

20. The increasing polarization of the political climate since 1999 has also slowed progress in compliance with the commitments of the peace agreements. The

Government of President Portillo has been marked by a series of corruption scandals producing intense criticism and conflict between the Government, on one hand, and opposition parties, the business community, civil society and the press, on the other, and paralysing much of the legislative agenda, including peace agenda priorities. Land and labour disputes and other social tensions have intensified amid an agrarian crisis worsened by the collapse of world coffee prices and a shortage of funds for social policies. The tensions culminated in mid-2003 over legal challenges to the presidential candidate of the Frente Republicano Guatemalteco, Efrain Ríos Montt, barred from two earlier elections by court decisions applying the constitutional provision prohibiting anyone who had participated in or benefited from a coup d'état from running for president. The party's strategy for reversing those decisions, which included two days of mob protests in the capital, generated an institutional crisis when perceived manipulation by the party of the Constitutional Court eventually led to a widely criticized decision in favour of Ríos Montt's candidacy which was a blow to the integrity and independence of the justice system.

21. The isolation and discrimination faced by Guatemala's indigenous peoples — half the country's population — have not visibly changed since 1997. Government steps to fulfil the commitments of the peace agreements in this area have been marked by a lack of political will and inadequate financial resources. Indigenous populations, particularly women, remain disproportionately poor, suffer high rates of illiteracy and health and social problems, largely as a result of lack of access to health care, education, decent housing, employment and social services. The Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people noted after a 2002 visit that Guatemala's structural discrimination was rooted in indigenous communities' lack of access to land and justice institutions and de facto exclusion from politics.

22. In sum[mary], seven years after the end of the armed conflict, Guatemala has reached a crucial turning point. Despite hopeful advances just after the signing of the peace agreements, the country is now moving in the wrong direction with regard to human rights issues. Momentum for the reform of crucial institutions, principally the police, the Public Prosecutor and the courts, has stalled at a time when changes have not fully taken root, and modernization efforts are starved of budgetary resources and political support.

23. Even in the midst of this difficult panorama, the foundations for most of the institutional reforms called for in the peace agreements are in place, awaiting a renewed commitment from the next Government to provide the policy and financial support necessary to begin to reverse the negative trends of recent years. The Government's recognition of the danger to human rights and the consolidation of democracy posed by the penetration of organized crime and drug trafficking is encouraging. It has adopted a proposal developed by human rights organizations and the Human Rights Ombudsman to investigate the clandestine groups associated with threats against human rights defenders, State corruption and organized crime. The proposal is currently under discussion with the United Nations. In addition, the Government has invited the Office of the United Nations High Commissioner for Human Rights to open an independent office in Guatemala to ensure continued international observation of the human rights situation and support to national human rights institutions after the termination of the MINUGUA mandate.

III. Challenges for the modernization and reform of key State institutions

24. As noted, the human rights problems that continue to beset Guatemala seven years after the end of the conflict are rooted in the failure of the State to progress further on important institutional reforms. While most of the legal framework for police and judicial sector reform (other than the prison system) is in place and modernization programmes have been under way for several years, the failure to adequately finance and implement key changes has hampered progress. In addition, the reforms themselves, while moderately improving the administration and case management of the courts and the Public Prosecutor's Office, have yet to translate into visible changes in the quality or speed of judicial investigations or trials. The principal institutional challenges remain (a) the establishment of open and transparent selection, training and career paths for qualified officials, (b) the installation of modern administrative and investigation procedures and technologies that facilitate efficiency and public accountability, (c) effective coordination mechanisms among the public security and justice sector institutions, and (d) extending the reach of justice sector institutions to the entire country in a way that respects and incorporates the cultural traditions and practices of indigenous communities.

A. National Civil Police

25. The difficult condition of the National Civil Police (PNC) is one of the most serious setbacks in the peace process. A consistent pattern of neglect since 1998 has transformed the institution responsible for guaranteeing public security into the principal source of human rights violations in the country today. The Mission confirmed police responsibility for seven extrajudicial executions (and one attempted murder) in 1998. Those numbers jumped to 20 killings (with two attempted murders) in 1999, 16 killings (and 18 attempted murders) in 2000, 40 killings (and 19 attempted murders) in 2001 and 43 killings (and 10 attempted murders, with 10 cases still under investigation) in 2002. MINUGUA has also verified an average of 66 cases of torture and 165 cases of cruel treatment and excessive use of force each year between 1999 and 2002. In addition, the Mission is receiving increasing information about police involvement in corruption, drug trafficking, organized crime and social cleansing activities throughout the country.

26. The deterioration of PNC is the result of several related problems. First, the Government has failed to adopt a strategic plan for the long-term development of the institution in the light of the public security challenges facing Guatemala. A draft plan for a policy for fighting crime in a democratic State approved by the Coordinating Body for the Modernization of the Justice Sector in December 2000 has been ignored. Police deployments and anti-crime programmes are therefore ad hoc, responding to the emergency of the moment, and the Government turns to the military, an organization with no civilian policing training and a terrible human rights record during the armed conflict, to support anti-crime patrols. In addition, planning capabilities have been undermined by constant changes in senior leadership: the Portillo Administration has appointed and removed four Ministers of the Interior and eight PNC directors since 2000.

27. Second, the PNC record of recruitment and training of police officers has been problematic. PNC made a strategic error in 1997 when it decided to incorporate officers from the former police units (35 per cent of the current force), undermining from the outset the goal of recruiting new officers with no prior human rights record. It struggled to recruit and train enough new personnel to meet the minimum of 20,000 set out in the peace agreements by the end of 1999, failing that goal by two years. This was largely the consequence of poorly planned and implemented recruiting campaigns, launched with little public notice and limited geographic scope, reducing the quantity and quality of potential applicants, a situation made worse by the inability of PNC to verify the past records of candidates for vacant posts. The National Civil Police Academy, the key to the education and training of the police force, has faced serious problems since 2001. Once PNC achieved its goal of 20,000 officers, the Ministry of the Interior and the PNC leadership appeared to conclude that supporting the Academy was no longer a priority. Drastic budget cutbacks in 2002 (a reduction to 9 million quetzales,[a] from 45 million in 2001) almost led to the closure of the school.

28. Third, the present force size is far too small for Guatemala's population, geography and levels of crime. While the peace agreements committed the Government to a minimum threshold of 20,000 officers, international standards (four police officers per 1,000 population in countries with low crime rates) indicate that Guatemala's police force should have a minimum of 44,000 officials.

29. Fourth, the Criminal Investigation Service, responsible for investigating crimes and providing the results to the Public Prosecutor's Office, lacks qualified personnel, infrastructure and equipment and modern information and case-management systems, and is only present in 15 of the country's 22 departments, with half of its 600 investigators concentrated in the capital. The Service is also understaffed by approximately 50 per cent. Conflicts with the Public Prosecutor over jurisdiction and responsibility for criminal investigations have contributed to the poor quality and long delays in producing evidence for prosecutions and, therefore, the persistence of impunity.

30. Fifth, human rights abuses and corruption remain widespread because the supervisory and disciplinary procedures of PNC are inadequate and the Public Prosecutor's Office has been able to investigate only a handful of the most serious and publicly visible cases. As of July 2003, some 1,600 complaints for serious violations of police regulations and criminal conduct were pending. In approximately 470 (30 per cent) of these cases, no investigation has been opened; in 870 (55 per cent) cases, investigations have been opened but not completed; and in 250 cases (15 per cent), the charges have been dismissed. More striking yet, some 2,300 police officers (some 12 per cent of the entire force) have been implicated in these complaints. About 67 per cent of the cases involve serious criminal charges — corruption, robbery, extortion, fraud, extrajudicial killings and torture — while the remainder involve serious violations of internal procedures and norms. A new disciplinary code that comes into effect in November 2003 should provide PNC with much greater internal authority to investigate, discipline and remove officers charged with serious violations of police regulations. Nonetheless, the institution will have to greatly strengthen its very weak oversight and control capability in order to implement the new rules effectively.

[a] The exchange rate is 7.99 quetzales to 1 United States dollar.

31. Finally, the Government and Congress have failed to provide PNC with adequate financial resources, even though the country faces a grave public security crisis and the police force is plagued by deep organizational, training and disciplinary problems. While the PNC budget grew modestly from 625 million quetzales in 1998 (although the police director had requested 1,411 million) to 842 million quetzales in 2000, the amounts were not adequate to finance the full expansion of the force to 20,000 and its deployment nationwide. The allocated budget for PNC has varied from 1,085 million quetzales in 2002 (1,411 million requested) to 1,324 million quetzales in 2003 (2,174 million requested). For 2004, PNC requested 2,000 million quetzales, while the Ministry of Finance reduced that number to 1,300 million quetzales, essentially the budget number for the current year. With approximately 880 million quetzales dedicated to cover salaries in 2004, little would remain for current vitally needed equipment, training, infrastructure improvements and force expansion.

B. Reform of the justice sector

32. A flurry of projects establishing the legal and administrative framework for reform of the justice sector — the judiciary, the Public Prosecutor's Office, the penitentiary system and the Public Defender Institute — were launched just after the signing of the peace agreements. The Supreme Court designed a five-year modernization plan (1997); a Commission for the Strengthening of the Justice Sector was established (1997) and issued comprehensive reform recommendations (1998); the Coordinating Body for the Modernization of the Judicial Sector was created (1997) and began executing a modernization loan provided by the Inter-American Development Bank (1998); the Public Prosecutor began restructuring the Public Ministry (1998); the Public Defender Institute was set up (1997) and achieved financial independence (1999); and the prison system began to design a modernization programme (1999). The Congress institutionalized reforms to the way judges are selected, trained, promoted and evaluated with the adoption of the Judicial Career Law and the Judicial Systems Civil Service Law and created the Judicial Career Council in late 1999. A new National Commission for the Strengthening of the Justice Sector was established in 2000 to follow up the reform and modernization initiatives.

33. Nevertheless, the administrative implementation of the reforms has been slow and uneven, hampered by internal and external opposition to change, a lack of qualified personnel, frequent changes in senior leadership and, in recent years, inadequate budgets. Full implementation of the Judicial Career Law is crucial for the replacement of judicial personnel from the pre-1997 period with judges and administrators educated and trained for an independent, efficient, modern justice system. The Unit for Institutional Training of the Supreme Court selects judicial candidates for a six-month training course and the Supreme Court is required to make appointments from a list of course graduates. Since 1998, the unit has completed four courses, from which some 121 judges have been appointed. In 1999, the Supreme Court set an important example when a new court was appointed after an open and transparent nomination process. The Supreme Court began reviewing the performance of judges in November 2001 with the evaluation of 66 trial judges whose appointment period was ending. The evaluation process gave 49 judges satisfactory marks, while 17 did not meet minimum standards.

34. However, the new selection, promotion and disciplinary standards have not been clearly defined and implemented in a fully transparent manner. The Supreme Court has, in some cases, conducted its own interviews of training unit graduates and not selected candidates based on examination rankings. Performance criteria have also been unclear. The Judiciary Career Council has addressed concerns about transparency and fairness by issuing detailed regulations and a manual on evaluation standards for judges. The need for judicial appointments based on merit and not political criteria was demonstrated in the 2003 crisis over the inscription of Rios Montt: the widely criticized political behaviour of the Constitutional Court, whose members are appointed by political sectors, contrasted sharply with the adherence to legal procedures and precedents by a Supreme Court selected openly on the basis of qualifications.

35. The expansion of courts has been consistent, but slow. At the signing of the peace agreements, Guatemala had 205 trial court judges and 279 justices of the peace. Almost eight years later, the judiciary has 281 trial court judges (a 73 per cent increase) and 379 justices of the peace (a 74 per cent increase). The Supreme Court had established mediation and conciliation centres to help ease court congestion in all 22 departments by the end of 2002 (but the centres still operate outside the Guatemalan legal framework, leaving no clear way for formal justice institutions to recognize or enforce mediation decisions). While these expansion programmes have been important, Guatemala only averaged 4.8 tribunals per 100,000 inhabitants at the end of 2002, an average of one tribunal for every 20,832 persons. In the interior of the country, the numbers are much lower; Alta Verapaz and Izabal, for example, have one tribunal per 40,000 and 36,000 persons, respectively. The Central American average is one tribunal per 16,400 inhabitants.

36. Efforts to improve access to justice have focused on constructing new judicial centres in underserved indigenous areas, expanding justice of the peace courts and adding bilingual staff and interpreters. Five judicial administration centres are now operating, but budgetary uncertainties (they were financed by an international loan), problems coordinating the work of the different judiciary actors and a lack of bilingual staff have raised concerns over their survival in the longer term. Justices of the peace, mostly non-lawyers selected from the community in which they work, have utilized informal, equity-based approaches to resolving non-criminal disputes compatible with indigenous law and cultural practices. Since 2002, however, the jurisdiction of the justice of the peace has expanded to include minor crimes, prompting a confusing change in the role of the court away from informal, equity-based dispute resolution towards formal legal procedures that clash with indigenous norms and practices. The expansion of the justice of the peace courts may, then, end up impeding community-based conciliation and dispute resolution practices and further excluding indigenous communities from the legal system, unless the procedural rules are modified. Finally, Supreme Court statistics indicate a major increase in the number of bilingual judges, administrators and interpreters in the judicial system, increasing from a total of 125 (98 judges, 23 assistant judges and 4 interpreters) in 2001 to 550 (98 judges, 323 assistant judges, 43 interpreters and 86 administrative personnel) in 2002.

37. Although the judiciary has undertaken major reform initiatives since 1997, the functioning of the courts has not improved visibly. The new Judicial Career Law has not yet made a notable impact on purging poorly qualified and performing judges, many holdovers from the pre-1997 judiciary. Administrative modernization of case

management has been slow. The workload per judge is heavy (for example, trial court judges in Guatemala City averaged 1,600 new cases per year in 2001). A 2002 draft of a new General Procedure Code aimed at unifying and simplifying all non-penal procedures (civil, business, family and labour), introducing oral hearings and decisions for faster outcomes and transparency, but it remains in suspension pending resolution of the failure of the current draft to properly reflect indigenous legal traditions and practices.

38. The work of judges has also been impeded by growing threats and intimidation in human rights, corruption and drug trafficking cases. The Special Prosecutor for Crimes against the Judicial Sector received 212 complaints in 2001-2002, of which 43 involved threats against judges, 30 against lawyers and 19 against prosecutors. In 2002, a justice of the peace was murdered by a mob; in 2003 a member of the appellate court for administrative issues was killed in an apparent hold-up and, a few days later, a judge working on high-profile narcotics cases was the victim of an assassination attempt. Two public prosecutors (including the Special Prosecutors for Human Rights Defenders) were also attacked. The Government has failed to provide resources for adequate protection, forcing the Supreme Court to set up its own security unit, but this force does not have the personnel, equipment or funds to assist the large number of judges who receive threats.

39. As with the other priority peace institutions, reform progress has been hindered by serious budget shortfalls since 2000. Between 1999 and 2000, national budget contributions increased from 366.5 million quetzales to 494 million, funds that financed the initial implementation of the Judicial Career Law, the creation of new courts, hiring of additional judges and administrative modernization. However, budget reductions to 453 million in 2001 and 407 million in 2002, combined with significant delays in the delivery of allocated funds, prompted a financial crisis and the suspension of a number of modernization, renovation and expansion projects. After the cutbacks in 2001 and 2002, the Supreme Court requested 1,000 million quetzales for 2003 and was authorized 623 million, a 21 per cent increase over the 2000 allocation. These budgets appear more limited when compared with the budgets of other court systems in Central America: while Guatemala spends $5.90 per person (2 per cent of the national budget), Panama spends $10.80 per person (4 per cent of its national budget), El Salvador spends $16.80 (6 per cent) and Costa Rica, $21.80 (6 per cent).

40. Prison reform saw little progress, notwithstanding two bloody riots in 2002-2003 that left 21 dead and underscored the lawlessness, overcrowding and corruption in the system. In 2003, Congress rejected a prison modernization bill and the recommendations of a Consultative Commission on the Penitentiary System remained unimplemented. Central aspects of penitentiary modernization, including the improvement of the School for Penitentiary Studies, health services and programmes for the rehabilitation of prisoners, remained seriously underfunded.

C. Office of the Public Prosecutor

41. The creation of an independent Public Prosecutor's Office in 1994 responsible for guaranteeing the strict application of the law in accordance with Guatemalan and international norms, including the investigation and prosecution of crimes and human rights violations, was an important step towards establishing the rule of law

in Guatemala. As with the judiciary, the reform challenges were enormous, beginning with an overhaul of the prosecutorial staff, continuing with the restructuring and modernization of administrative procedures and practices, and concluding with the extension of the Office beyond the 10 per cent of the municipalities it covered in 1997.

42. The Public Prosecutor's Office developed a strategic modernization plan in 1996 for the reorganization of district and municipal prosecutor's offices, overhauling operations in the capital by the end of 1999 and in the interior by the end of 2001. However, a new Public Prosecutor appointed in 1998 modified the strategic plan to focus on a new set of priorities for his 1998-2002 term. Progress slowed and the Mission noted few improvements between 2000 and mid-2002. Prosecutors continued to be appointed, promoted and removed by the Public Prosecutor with no transparent selection criteria and no implementation of civil service norms. The Office had not established a comprehensive education and training programme for new prosecutors, and its training unit focused on providing seminars on diverse topics, rather than serving as the centre for the selection and education of new staff as called for in the peace agreements.

43. In mid-2002, a new Public Prosecutor was appointed to a five-year term after an open selection process in which a group of civil society organizations promoted a public evaluation of the candidates. During his first year, the new Public Prosecutor produced a policy document to guide institutional strategies, entitled "A Democratic Crime Policy for the Public Ministry", and a new programme to "re-engineer" and modernize the Office, focusing on three strategic axes: reorganizing the prosecutors' offices, including the addition of 200 new prosecutors; the creation of a criminal investigation agency inside the Office, a controversial proposal that appears to assign functions that legally pertain to PNC; and the creation of a training programme for prosecutors through the establishment of a University Centre for Justice and Prosecutors. In response to the ongoing threats against human rights activists, a Special Prosecutor for Crimes against Human Rights Defenders was created.

44. Although the new Public Prosecutor began his term with a series of important initiatives aimed at revitalizing the reform process, his first year was controversial. He raised the public profile of the institution, but was criticized by the press for grandstanding and for the mixed results on investigations into corruption cases. The controversy was heightened by the resignation of prosecutors investigating corruption and human rights complaints. The re-engineering programme focused on internal reforms, in particular new computerized case management and file control systems. The Public Prosecutor continued the practice of nominating officials through personal service contracts, but began to apply norms for a transparent prosecutorial career in 2003 with the announcement of a competitive process for the selection of the 200 new prosecutors promised in his modernization proposal. However, planned expansion of the number of prosecutors in the interior of the country had not yet resulted in a significant number of new appointments. As at September 2003, the Office had a total of 756 prosecutorial staff (31 senior prosecutors, 6 assistant district prosecutors, 142 prosecutors and 578 assistants), only 30 more than in 2002 (38 senior prosecutors, 131 prosecutors and 557 assistants). In terms of geographic coverage, the Public Prosecutor still had offices in only 10 per cent of Guatemala's municipalities, which was no improvement over 1997.

45. In general, most of the specialized prosecutor units did not demonstrate better results, largely because of a lack of definition of responsibilities and jurisdiction and inadequate staff and other resources. For example, the Special Prosecutor for Crimes against Journalists and Labour has received 202 complaints since June 2001 but has filed charges in just two cases. The Special Prosecutor for Crimes against Human Rights Defenders has received 79 complaints since June 2002: seven have been closed and charges have been filed in five cases. In response to an increase in threats against human rights defenders, the Public Prosecutor greatly strengthened the Office of the Special Prosecutor for Crimes against Human Rights Defenders in mid-2003, expanding the unit from 3 to 60 staff members, and MINUGUA has since noted advances in the investigation of a number of important pending cases.

46. As with the other justice sector institutions, inadequate national budgets have contributed to the slow pace of reform since 2000. The budget for the Office of the Public Prosecutor has grown significantly since 1996, rising from 189.6 million quetzales (149.5 million from the national budget) in 1997 to 433 million (399 million from the national budget) in 2003, a 53 per cent increase over six years. Nonetheless, the increases began from a wholly inadequate 1996 base and were not sufficient to finance needed internal reforms and the expansion of the Public Prosecutor's Office to the underserved interior of the country. In May 2002, the new Public Prosecutor asked Congress for an increase of 220 million quetzales, insisting that the current budget would not allow for reforms or the expansion of services; he received a 60-million quetzal supplemental allocation. For the 2003 budget, he requested 700 million quetzales, but was only awarded 399 million. The Government's 2004 budget proposal allocates 458 million quetzales, a 21 per cent increase, still modest in the light of the institution's needs.

47. The Public Prosecutor has been able to demonstrate, in a limited number of cases, a capacity to act effectively against State officials accused of human rights violations and corruption. In 2002, for example, 16 police officers in the notoriously corrupt (and later disbanded) PNC anti-drug unit were convicted of murdering two civilians in an illegal drug operation. In September 2002, two individuals were convicted for the killing of a prosecutor during a 2001 robbery and three for the 2001 lynching of a justice of the peace (although the case must now be retried because of due process violations). The Public Prosecutor arrested a number of senior Government officials in 2003 in connection with the theft of funds from Guatemala's social security fund.

48. Nonetheless, by late 2003 the ability of the justice sector, including the Public Prosecutor's Office, to respond to crime, corruption and human rights violations had not notably improved since 1997. The Public Prosecutor himself noted that of the 3,500 known homicides committed in 2002, only 200 suspects were arrested, of which, only 78 were ultimately convicted, a resolution of just 2 per cent of all homicides in that year, a rate equal to that estimated by MINUGUA for the work of the Public Prosecutor's Office in 1998.

D. Impunity

49. The Government has not made significant progress on its commitment to end impunity for human rights violations, particularly the crimes committed during the conflict described in the report of the Commission for Historical Clarification

(A/53/928, annex). Many of the cases stem from massacres, such as those committed in Dos Erres (178 civilians tortured and killed over three days by the army in 1982); Río Negro (70 females and 107 children killed by army soldiers and PAC's in 1982); El Aguacate (21 peasants killed by a guerrilla patrol in 1988); and Cuarto Pueblo (400 residents of a village executed by the army in 1982). Others involve the assassination or forced disappearance of human rights activists and political figures, such as Myrna Mack (1990); Epaminondas González Dubón (1994); Jorge Carpio, a presidential candidate killed during the 1995 campaign; Manuel Saquic, a pastor and human rights coordinator (1995); and Monsignor Juan José Gerardi (1998). Other, more recent cases, such as the 2001 disappearance of university professor and former member of URNG, Mayra Gutiérrez and the killing of Barbara Ann Ford, a member of a religious order working on mental health projects in indigenous communities, remain unsolved.

50. Two important cases, namely, the murders of Monsignor Gerardi and Myrna Mack, registered advances and resulted in convictions in 2001 and 2002, respectively, against members of the Presidential General Staff. The cases continue on appeal (an appeals court notoriously favourable to the military overturned both convictions but, in the Gerardi case, the Supreme Court overruled the appellate court and ordered that the case continue, a decision confirmed by the Constitutional Court, while a Supreme Court decision on the Mack appeal is pending). Nevertheless, the verdicts represented the culmination of 12 years of extraordinary efforts on the part of the Mack family and four years by the Office of Human Rights of the Archdiocese of Guatemala and a handful of committed prosecutors, judges and witnesses to overcome relentless efforts to undermine the proceedings.

51. Impunity in Guatemala is directly tied to the administrative and management weaknesses of rule of law institutions described above, as well as a lack of interest or will by State officials to investigate or prosecute and the use of threats, intimidation, corruption and killings, particularly in cases involving military defendants, to undermine cases. Impunity cannot be reduced without significant progress on police, prosecution and court reforms. Experience in other post-conflict societies also suggests that, unless reform programmes move forward at the same pace in all justice sector institutions, they will not produce visible improvements in reducing crime, corruption and impunity.

IV. Final observations

52. **The loss of momentum for the reform of public security and justice institutions has undermined hopes for improving the fragile human rights situation in Guatemala. The deterioration of the National Civil Police and slow modernization of the courts and the Public Prosecutor's Office have undermined key commitments of the peace agreements: there has been almost no significant progress in combating impunity or eliminating clandestine groups; human rights defenders and judicial sector officials remain subject to ongoing threats, harassment and, in some cases, fatal attacks; and systematic discrimination against indigenous communities continues unabated. Progress on these issues will require renewed dedication to institutional reform on the part of the next Government.**

53. Important advances have been made in a number of human rights areas since 1997, in particular the Government's commitment to ratifying international human rights treaties, improving relations with the Inter-American Commission on Human Rights, adopting an anti-discrimination law, establishing a National Reparations Commission and beginning to improve access to justice for indigenous communities. The political process is open and competitive and the press is free and vocal, even in the face of threats and harassment. However, without the strengthening of fundamental State institutions, these advances may prove to be of limited value. Without adequately functioning rule of law institutions, for example, the effective implementation of the human rights treaties ratified by the Government since 1997 will be difficult.

54. It must be recognized that the profound political, social and cultural changes called for in the peace agreements cannot be fully achieved in seven years; as other post-conflict States have demonstrated, the transformation from authoritarian regimes to a democratic culture is a long-term project marked by faster and slower reform periods. Yet, in Guatemala, it is cause for concern that, not only are reforms progressing slowly, but the Government and a number of other political and social sectors no longer appear committed to the changes that are at the heart of the peace process.

55. Thus the urgent need for the next Government to build upon the achievements of the dedicated and courageous police officers, judges, prosecutors and human rights defenders who have helped to lay the foundations for reform. They have demonstrated — in the Mack and Gerardi cases, in the convictions of corrupt police officers, in arrests of State officials implicated in corruption — that State institutions can indeed function to end impunity and achieve justice for human rights violations with political will, organization and adequate resources.

56. The most immediate challenge is public security, particularly reversing the deterioration of PNC. The new Government must adopt as an early priority a comprehensive democratic public security strategy for the 2004-2008 period. The strategy should include a doubling of the minimum size of the force to 40,000 officers by the end of 2008, the establishment of strong internal professional controls on the basis of the newly adopted disciplinary regulations, the dismissal of officers with poor human rights and performance records, comprehensive new recruiting programmes and the strengthening and expansion of the Police Academy. The prison system requires a full overhaul, beginning with the adoption of the prison reform legislation rejected by the leadership of the Congress this year and implementation of the recommendations of the Commission for the Transformation of the Penal System.

57. The judicial sector actors — the courts and the Public Prosecutor — must intensify the speed and depth of modernization programmes already designed and under way. The Supreme Court and the Public Prosecutor should fully institutionalize and support the transparent implementation of civil service career structures now in place, accelerating the review of judges, prosecutors and administrative personnel to purge the institutions of poorly performing and corrupt officials. The installation of management systems to monitor the

flow of cases and performance of every judge and prosecutor should be accelerated. And security for judicial sector officials must be substantially improved. Finally, Constitutional Court magistrates should be selected on the basis of qualifications and merit, following procedures similar to those used to nominate members of the Supreme Court.

58. **The Supreme Court and the Public Prosecutor should accelerate the full integration of indigenous legal traditions and practices into the formal legal system, dramatically increase the bilingual capacity of the system and educate personnel on indigenous legal customs. Access to justice programmes, particularly the judicial administrative centres and the proposed expansion of the justice of the peace jurisdiction, should be modified to fully incorporate the equity-based, informal and local dispute resolution practices of indigenous communities. The Coordinating Body for Modernization of the Justice Sector, directed by the heads of the Supreme Court, the Office of the Public Prosecutor, the Interior Ministry and the Public Defender Institute, should assume its original purpose of coordinating modernization policies of all the sector's actors.**

59. **While the challenges are ambitious, the new Government should be able to tackle these priorities quickly: reform and modernization studies and strategies and legal frameworks have been completed in most cases and many programmes are well under way. What is required is a political commitment by the new Government and Congress to the urgent implementation of these reforms and a significant reallocation of budget resources for the 2004-2008 period to these priorities. Each institution should present detailed plans and budget proposals outlining how modernization programmes will be phased in over the next Government's term, with annual targets and indicators to measure progress and marshal ongoing support.**

60. **Civil society organizations should continue to work to produce independent, non-partisan analyses of the human rights situation, actively engage the State on important issues, and seek cross-sector alliances to advance the strengthening of democratic norms and practices.**

61. **The United Nations system continues to support the Guatemalan peace process. Following a request by the President, the Secretary-General has recommended that MINUGUA remain in the country until the end of 2004. The Mission is prepared to assist the new national and local governments taking office in January to reinvigorate the stalled reform programmes initiated under the peace agreements seven years ago. The Office of the United Nations High Commissioner for Human Rights plans to open an independent office to observe the Government's human rights performance and to provide technical assistance to the Human Rights Ombudsman, the judiciary, the Public Prosecutor and civil society organizations.**

62. **Guatemala's international donors are urged to fully support human rights institutional reform priorities on the basis of a demonstration of Government commitment through the allocation of appropriate funds from the national budget.**